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Dominion of  
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inconsistent and embarrassing defences which is not allowed under the Civil Procedure Code (See page 579 of Mulla's Code of Civil Procedure). If contradictory pleadings were to be allowed and that is what it comes to when a defendant pleads that the goods were insured with him but goods were not insured because of a certain reason, this would be covered by what Lindley, L. J., said *In re Morgan* (1). The learned Lord Justice said—

“I quite see that that power may be very much abused. It may be abused to such an extent as to be embarrassing and unfair and oppressive to the other side.”

and it appears to me for that reason that the issues were framed as they have been framed, and even if such a plea was open to defendant No. 2 it was his duty to get a specific issue raised and then the parties could have led evidence on that issue.

I would therefore allow these appeals against defendant No. 2 and decree the plaintiff's suits with costs throughout.

Falshaw,  
J.

FALSHAW, J. I agree.

#### CIVIL REFERENCE

*Before Falshaw and Kapur, JJ.*

M/s TELU RAM JAIN AND CO.,—*Petitioner*  
*versus*

THE COMMISSIONER OF INCOME-TAX, PUNJAB,  
SIMLA,—*Respondent*

Civil Reference No. 20 of 1953

*Excess Profits Tax Act (XV of 1940)—Sections 13, 15 and 16—Whether the assessment to Excess Profits Tax in respect of chargeable accounting period 1st April, 1941 to 31st March, 1942, which proceeding commenced with the issue of a notice under section 13 of the Excess Profits Tax Act, 1940, in March, 1950 was barred by time—Interpretation of Statutes—Words “deemed to have come into force”—Meaning of.*

(1) (1882) 35 Ch. D. 492 at p. 500

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*Held*, that the Amending Act not only repealed the period of five years which was provided for in Section 15 of the old Excess Profits Tax Act but it also provided that that period should be deemed never to have existed and, therefore, the provision as to five years must be taken as never to have been there in section 15 of the Act of 1940, and any plea which might have been open to an assessee on the ground of five years' period would not be available to him. Therefore no question of limitation arose and it could not be said that notice issued by the Excess Profits Tax Officer on 8th March, 1950, was barred by time.

*Held also*, that when a statute enacts that something shall be deemed to have been done which in fact and truth was not done, the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and should be carried to its logical conclusion.

*State of Bombay v. Pandurang Vinayak Chaphalkar and others* (1), *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (2), and *C. V. Govindarajulu Iyer v. Commissioner of Income-tax, Madras* (3), referred to.

Case reported by the Registrar, Income-tax Appellate Tribunal, Bombay, under section 66(1) of the Indian Income-tax Act, 1922 (Act XI of 1922) as amended by section 92 of the Income-tax (Amendment) Act, 1939 (Act VII of 1939) for orders of the High Court against the order of Shri K. N. Rajagopal Sastri, Judicial Member, and Shri A. L. Sahgal, Accountant Member, dated 18th June, 1953.

K. L. GOSAIN and H. S. DOABIA, for Petitioner.

S. M. SIKRI, Advocate-General and H. R. MAHAJAN, for Respondent.

#### JUDGMENT

KAPUR, J. This is a reference made by the Income-tax Appellate Tribunal, Delhi, under section 66(1) of the Indian Income-tax Act and is dated 18th June, 1953, where the following question has been submitted to this Court for decision :—

“Whether the assessment to Excess Profits Tax in respect of the chargeable accounting period 1st April, 1941 to 31st

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(1) 1953 S.C.R. 773  
 (2) (1952) A.C. 109  
 (3) 16 I.T.R. 391

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March, 1942, which proceeding commenced with the issue of a notice under section 13 of the Excess Profits Tax Act, XV of 1940, in March, 1950, was barred by time ?”

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The assessee is a firm and the period in regard to which the dispute has arisen is the assessing period from 1st April, 1941, to 31st March, 1942. A notice under section 13 of the Excess Profits Tax Act was issued to the assessee on the 8th of March, 1950. There had been no other assessment under this Act during any previous assessing period. It was unsuccessfully contended before the Income-tax authorities as also before the appellate Tribunal that this Excess Profits Tax assessment was barred by time. Under section 13 of the Excess Profits Tax Act power is given to the Excess Profits Tax Officer to issue notice for assessment requiring any person whom he believed to be engaged in any business to which the Act applies to furnish within a period specified a return in the “specified form with respect to any chargeable accounting period specified in the notice setting forth the profits of the business as computed in accordance with the provisions of the Act. This section reads as follows :—

“13. (1) The Excess Profits Tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay excess profits tax, to furnish within such period, not being less than sixty days from the date of the service of the notice, as may be specified in the notice,

a return in the prescribed form and verified in the prescribed manner setting forth along with such other particulars as may be provided for in the notice with respect to any chargeable accounting period specified in the notice the profits of the business and the standard profits of the business as computed in accordance with the provisions of section 6 or the amount of deficiency available for relief under section 7 :

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Provided that the Excess Profits Tax Officer may, in his discretion, extend the date for the delivery of the return.  
(2) The Excess Profits Tax Officer may serve on any person, upon whom a notice has been served under subsection (1), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Excess Profits Tax Officer may require and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require :

Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the 'previous year' as determined under section 2 of the Indian Income-Tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937."

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In section 15 of this Act provision is made in regard to profits escaping assessment. That section as it stood before the amendment by section 16 of Act XXII of 1947, read as under :—

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“ 15. If, in consequence of definite information which has come into his possession the Excess Profits Tax Officer discovers that profits of any chargeable accounting period chargeable to excess profits tax have escaped assessment, or have been under-assessed, or have been the subject of excessive relief, he may at any time within five years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 13, and may proceed to assess or reassess the amount of such profits liable to excess profits tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.”

Section 16 of the Amending Act (XXII of 1947) was as follows :—

“ 16. In section 15 of the Excess Profits Tax Act, the words ‘within five years of the end of the chargeable accounting period in question’ shall be omitted, and shall be deemed always to have been omitted.”

Thus the words “within five years of the end of the chargeable accounting period in question” were removed and it was also provided that these words should be deemed always to have been omitted and thus on the date when notice

under section 13 was given the period which had originally been prescribed had been repealed and thus there was no period prescribed for purposes of section 15.

In this case, therefore, before the period of limitation, even under section 15 as it was before the amendment, expired, an Amending Act was passed which, though it received the assent of the Governor-General on the 18th of April, 1947, came into force according to the Act itself on the 31st of March, 1947. The words used in section 1(2) are—

“ It shall be deemed to have come into force on the 31st day of March, 1947.”

It was held in *the State of Bombay v. Pandurang Vinayak Chaphalkar and others* (1), that when a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion. If we keep in view the statutory fiction mentioned in this section of the Amending Act, then to carry it to its logical conclusion I must hold it to mean that the Act came into force on the day it was by legal fiction deemed to come into force and became effectual and applicable to all those cases which had not become barred by time on the 31st March, 1947, and in this I have not taken into consideration the words of section 16 which provide that they shall be deemed to have always been omitted. Reference may also be made to the judgment of the House of Lords in *East End Dwellings*

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*M/s. Telu Ram Co. Ltd. v. Finsbury Borough Council* (1), where  
Jain & Co. Lord Asquith said—

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“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it, \* \* \*. The statute says that you must imagine a certain state of affairs ; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

Thus the Amending Act not only repealed the period of five years which was provided for in section 15 of the old Excess Profits Tax Act, but it also provided that that period should be deemed never to have existed and therefore in my view the provision as to five years must be taken as never to have been there in section 15 of the Act of 1940, and any plea which might have been open to an assessee on the ground of five years' period would not be available to him.

It was next contended that the notice was under section 13 of the Excess Profits Tax Act and because it was not given during the assessing period, the section is not applicable and the only notice which could be given was a notice under section 15, and as no such notice had been given the Department had no power to levy Excess Profits Tax. In the first place this question was never raised at any stage of the proceedings before the Department or the Appellate Tribunal and secondly this Court is not entitled to raise

any new questions unless the matter is brought before it under section 66(2) or is referred to it by the Tribunal under section 66(1) of the Indian Income-tax Act and thirdly there is no substance in this submission. The counsel for the assessee relied on *C. V. Govindarajulu Iyer v. Commissioner of Income-tax, Madras* (1), but in my opinion that does not help the petitioner. All that was held in that case was that where an assessee failed to furnish a return of his income as required under section 22(1) of the Income-tax Act and no notice was given under section 22(2) of the Act, the Income-tax Officer was competent in the course of proceedings under section 34 read with section 22(2) to assess such income and to levy a penalty. The contention raised by Mr. Gosain does not seem to be supported by this judgment. Besides the language used in section 13 is quite different and it gives power to the Excess Profits Tax Officer to require any person who he believes to be engaged in any business or to have been so engaged during any chargeable accounting period or to be otherwise liable to pay Excess Profits Tax to make a return. The language of this section is in my opinion quite wide and notice can go to a person who is engaged or has been engaged or is otherwise liable and therefore the interpretation sought to be put on this section by the petitioner is in my opinion unsustainable.

In view of the interpretations which I have put on sections 13 and 15 of the Excess Profits Tax Act, no question of limitation arises and it cannot be said that the notice issued by the Excess Profits Tax Officer on the 8th March, 1950, was barred and I would therefore answer the question in the negative. The assessee shall pay the costs of the Commissioner. Counsel's fee Rs. 250.

FALSHAW, J. I agree.

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